

Community of Practice for Family Law Attorney's Representing Immigrant Survivors of Domestic Violence and Sexual Assault

**Continued Discussion of Removal of Conditions
for Lawful Permanent Residents based
on Divorce or Abuse**

February 4, 2020

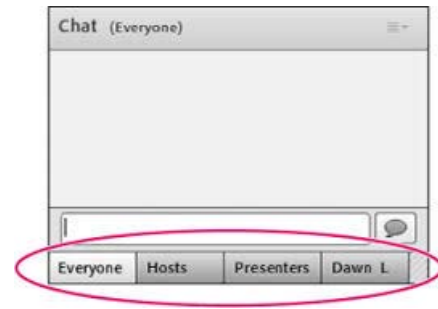


Next COP Calls

- March 24, 2020 at 1pm EST
- April 21, 2020 at 1pm EST



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Tutorial of COP website

What is removal of conditions for lawful permanent residence ?

Waivers for joint filing : focus on divorce and abuse

Outstanding questions from last COP and new questions



New Community of Practice Website Tutorial



attorney.niwap.org

Attorneys Community of Practice

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About the Community of Practice

The NIWAP Community of Practice facilitates learning between family law practitioners and national experts to address common and recurring problems faced by immigrant survivors in family court.

Family law participants and expert faculty will engage in joint discussions and activities that include sharing stories, tools, resources, experiences and best practices; building relationships that enable participants to learn from each other how to better represent immigrant survivors in family court cases

A community of practice is designed to develop and sustain ongoing learning opportunities that facilitate sharing of experience, expertise and problem solving among participants. This community provides participants the opportunity to gain insights and feedback, access tools and resources, and build relationships with colleagues in similar roles across the country.

Membership Benefits

- Opportunities to build relationships with family law colleagues nationwide who really understand your work, and can provide peer mentoring on a variety of topics.
- Monthly conversations with peers that are tailored to your questions, interests, and responsibilities.
- 24/7 access to a private online community forum with information on COP events, notes on calls, resources, and discussion threads.
- Information from guest speakers and subject matter with expertise in family law issues and opportunities.

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NIWAP

National Immigrant Women's Advocacy Project,
American University Washington College of Law

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Protected: September 20, 2018: “Using Civil Protection Orders to Prevent Forced Marriages” (Webinar)

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Removal of Conditions for Immigrant Victims of Domestic Violence and Sexual Assault

Case Summary

- The Wife is a conditional lawful permanent resident; her status expires 8/2020
- She married her US citizen spouse in 2/2017
- The couple separated in 11/2017 and reconciled
- In 8/2018 they attended an interview with the USCIS and her conditional lawful permanent residency was approved
- They separated again and Wife moved to Ohio in 2/2019 and contacted us to help with her immigration case to file I-751 to remove conditions. Wife wants to file for divorce and our immigration lawyer believes it would help her immigration case.

Case Summary Continued...

- The problem is that she described to our intake that Husband never put his hands on her or threatened to harm her or her family, but has told her that "I should deport you if I can't have you then no one else should" or that "There's no reason for you to live in the US if you're not with me."



What is Conditional Permanent Residency?

- People who apply for permanent residency based on a marriage to a U.S. citizen or LPR spouse
- Marriage is less than two years old at the time their residence is granted
- Valid for two years
- Must file “Petition to Remove Conditions on Residence” (Form I-751) in order to extend their status to LPR status



Timeframe is Important

- Conditional LPR status expires 2 years from the date it was granted
 - May be worth delaying adjustment if couple has almost reached 2 year anniversary, skips extra application and fee
- If couple “jointly” file to remove conditions must be filed within 90 days of the date LPR status expires
 - Status automatically extended
- Can be deportable if not filed, and you can not show extraordinary circumstances


If Conditional Resident is Still Married

- Must “Jointly” file the Application to Remove Conditions (I-751)
 - Depends on the status of the marriage at the time of filing
- Must file within 90 days of the date conditional LPR status expires
- Spouse must sign and may have to attend interview
 - Limited exceptions on missing the deadline



Evidence for Joint Petition

1. Proof the marriage was legal in the jurisdiction where it took place
2. Proof the marriage has not been terminated
 - If viable marriage = they both sign
 - If they are separated or divorce proceedings = submit pleadings, will get RFE for spouses signature
3. Proof that marriage was not entered to get LPR status
4. Proof that no fee was paid
5. USCIS may interview the couple



What evidence could
you submit to show the
marriage was not
entered for the purpose
of obtaining residency ?

Waiver is Available if No Longer Married

- Should file waiver at any time before, during, or after the 90-day window
- Must show:
 1. Good faith marriage but the marriage has terminated or spouse died; and/or
 2. Good faith marriage , but the conditional resident or her child was subject to battery or extreme cruelty; and/or
 3. Termination of conditional residence would cause extreme hardship



Can you file a joint waiver based on multiple waiver grounds?

If your client's spouse (abuser) petitions the family court for annulment how could that impact your client's ability to successfully file to their removal of conditions or VAWA self-petition applications?



USCIS will examine the evidence that marriage was entered in good faith with extra scrutiny when a divorce or annulment has take place.

How can you draft your pleadings in a manner that supports a waiver of joint filing for removal of conditions?



Conditional Resident has been Subject to Battery or Extreme Cruelty

- Could be eligible if the applicant or their child was subjected to battery or extreme cruelty
- Must still show marriage was legal and entered in good faith
- Need not prove that the marriage has been terminated
- Submit evidence and declaration like you would a VAWA self-petition
- Standard is any credible evidence

Under what circumstances would you want to also file a VAWA self-petition?



Considerations

- Where is the application adjudicated?
- What happens if it is denied?
- What is the burden proof?
- Who is making the decision?
- Is my client protected by VAWA Confidentiality?

Question from last COP: Has anyone had success obtaining SIJS for a child where the predicate finding that a parent abused, neglected, or abandoned a child was from an adoption case? What about a stepparent adoption case?



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